

No. 14/13/87-6Lab./836.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court II, Faridabad in respect of the dispute between the workman and the management of M/s Palwal Co-op Sugar Mills, Ltd., Palwal *versus* Charan Singh

IN THE COURT OF SHRI U. B. KHANDUIA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Ref. No. 42/88.

THE MANAGEMENT OF M/S PALWAL CO-OP. SUGAR MILLS, LTD., PALWAL

versus

THE WORKMAN NAMELY SHRI CHARAN SINGH, S/O SHRI BHORI LAL, VILLAGE KIRPALPUR,
POST OFFICE TOPPEL, DISTT. ALIGARH (U. P.)

Present :

Shri Pardeep Sharma, for the workman.

Shri P. R. Sikka, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of Sub Section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 14230—35, dated 7th April, 1988 :—

Whether the termination of services of Shri Charan Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the respondent Mills (hereinafter referred to as the management) as Cms Punching clerk w. e. f. 30th December, 1983 on fixed salary of Rs. 520 p.m. His employment was seasonal/regular though he was to be on probation for a period of 2 years. He had worked for two crushing seasons to the satisfaction of the management. However, Mr. Dharambir Dahiya, Cane Development Officer had ill feelings against him. He was involved in a false criminal case but was not found guilty and was acquitted by the court,—*vide* order dated 24th February, 1987. Meanwhile the management had illegally terminated his service on 26th December, 1985 due to involvement in the aforesaid false criminal case. He requested the Managing Director to take him on duty but to no avail. He is thus, entitled to be reinstated into service and full back wages.

3. The management submitted written statement dated 18th October, 1988 stating therein that the workman was appointed on probation for a period of two crushing seasons. He was not appointed as regular employee. He had joined the service on 1st February, 1985 and had worked upto 13th March, 1985. Then again he had joined the service on 18th November, 1985 in the next crushing season. He prepared two bogus chits bearing No. 7313 dated 25th November, 1985 and No. 7043 dated 29th November, 1985 while working in the yard as punching clerk in the name of Dal Chand, S/o Samanti resident of village Gudrana. He admitted this fact in writing. This fact was also admitted by the farmer in whose name the chits were prepared by the workman. The management lodged a complaint against him at the Police Station, Sadar, Palwal and the case was registered under F. I. R. No. 4 dated 6th January, 1986. The preliminary enquiry to find out true facts was also got conducted from Shri Rajpal Singh, Cane Marketing Officer and he submitted his report dated 26th December, 1985. The impugned order dated 26th December, 1985 was then passed terminating his service during the period of his probation. Subsequent order passed by the court has no effect and as such the workman is not entitled to relief claimed by him.

4. The workman submitted rejoinder dated 3rd November, 1988 re-asserting the previous averments and denying the averments of the respondent management.

5. On the pleadings of the parties the following issues were framed :—

- (1) Whether the termination of services of Shri Charan Singh is legal and justified ? If not, to what relief, is he entitled to ? (As per reference).
- (2) Whether the reference is bad.

(3) Whether the workman remained gainfully employed ? If so, to what effect ?

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues framed are as under :—

Issue No. 1 :

8. Three witnesses have been examined by the management. MW-1 Shri B. S. Dahiya, Cane Manager deposed that the workman had made bogus entries in the punching register regarding to weightment slips No. 7313 dated 25th November, 1985 and 7043 dated 29th November, 1985 copies of which were Ex. M-1 and Ex. M-2. He further stated that he had conducted investigation on the direction given by Managing Director and had submitted his report Ex. M-16. In the end, he stated that the workman had also given in writing admitting his guilt copy of which is Ex. M-17. Dai Chand, S/o Shri Samant, the farmer concerned had also made statement Ex. M-16 before him that he had not supplied cane to the mill as mentioned in the weightment slips Ex. M-1 and Ex. M-2. MW-2 Vinod Kumar time keeper deposed that the workman was appointed as seasonal clerk w. e. f. 1st February, 1985 and had worked upto 13th March, 1985 and thereafter he was paid retaining allowance during the off season at the rate of 50 % of the wages. He was again recalled on 18th November, 1985 and had worked upto 25th December, 1985. MW-3 D. C. Sharma deposed that the workman was appointed on probation through letter Ex. M-21 for a period of 2 crushing seasons on consolidated salary of Rs. 520. He further confirmed the position as deposed by the first two witnesses.

9. On the basis of aforesaid evidence, it has been submitted on behalf the management that it is clearly established that the workman has not rendered service for continuous period of more than 240 days with them. He had not completed tenure of his probation. His services were legally and validly terminated when he was found guilty of the charge mentioned above in the fact finding enquiry report and the management had lost confidence in him.

10. On the other hand, the workman deposed that he was appointed on 30th December, 1984 as Cane Punching clerk on regular basis in the regular scale but the letter of his appointment was taken back and he was given appointment letter showing his appointment on probation for a period of 2 years on consolidated salary of Rs. 520 p.m. The management had got him implicated in criminal case on false allegation and his services were also terminated. He was not served with any chargesheet before the termination of his services. No domestic enquiry was also held. The court had discharged him in the criminal case as per order Ex. W-1. He had submitted his application for his reinstatement but the management had not taken any action.

11. On the basis of aforesaid evidence it has been submitted on behalf of the workman that it is clear from the perusal of the impugned order dated 26th December, 1985 Ex. M-23 that the services the workman were terminated on account of his involvement in issuing two bogus chits mentioned above. It is also mentioned in this order that the involvement of the workman showed his mala fide intention and that he had done it deliberately to cheat the mills. The allegations mentioned in the impugned order casts a stigma on the character of the workman. It is not a simple order terminating the services of the workman during the period of probation. It is well settled that such an order terminating the services of a workman casting a stigma can not be passed even against a probationer unless he is found guilty of the charges in a regular domestic enquiry. In the instant case, the workman was not served with any charge-sheet and no domestic enquiry was got conducted. The impugned order is thus, illegle and null and void. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages.

12. To support the aforesaid contention the authorised representative of the workman has placed reliance on the decision in the case of Chaganlal Prahladrai Singhania versus Maharashtra State Co-operative Marketing Federation, Ltd. 1992 LLR 394 in which it was held that the termination of service of a workman solely because of his arrest in the case of mis-appropriation of certain amount on the ground of loss of confidence is illegal. He has also referred to the decision in the case of Mrs. Neera Mathur versus Life Insurance Corporation of India and another 1992 LLR 331 in which the order of discharge simply citing during the period of probation without assigning any reason was not upheld on finding that it was passed on the basis of allegation that the workman had given false declaration to conceal the factum of pregnancy. Lastly he referred to the case of Theatre Employees Union & others versus S. V. Kotnis and others 1992 LLR page 600 in which the action of the respondent terminating the services of twelve booking clerks who had rendered service for a period of more than 12 years on the basis of their statements admitting the guilt was not approved as the same was passed without issuing any show cause notice or conducting domestic enquiry.

13. It is established from the evidence discussed above that the workman was appointed on probation for a period of two crushing seasons. The perusal of appointment letter dated 31st January, 1985 Ex. M-21 clearly shows that the management had simply changed the position with regard to pay and they had not altered the condition with regard to the appointment of the workman on probation. Thus, the plea taken by the workman that he was appointed on regular basis can not be accepted.

14. It is also established from the evidence referred to above that the services of the workman were terminated before the expiry of period of his probation. The perusal of the impugned order dated 26th December, 1985 Ex. M-23 clearly shows that it was passed by way of punishment casting a stigma. There is no dispute that such an order could be passed only after issuing chargesheet calling upon the workman to explain his position with regard to the charges and in the case of denial to hold domestic enquiry as per ratio of the cases referred to above by the authorised representative of the workman.

15. In the instant case, it is clearly established from the statement of the witnesses examined by the management referred to above that the management had got a fact finding enquiry conducted into the matter. The management had not passed the impugned order solely on the ground that a criminal case had been got registered against the workman. It is also clear that the workman had admitted his guilt in his letter Ex. M-17. This letter is addressed to the Cane Development Officer who had conducted the fact finding enquiry. Dalchand farmer also admitted in his letter Ex. M-19 produced before the enquiry officer. The workman had also admitted that the farmer was ready to make the payment with regard to two bogus chits. It is thus, clear that the management had afforded reasonable opportunity to the workman to defend his case before the enquiry officer who had conducted fact finding enquiry. It was not necessary for the management to hold domestic enquiry keeping in view the admission made by the workman. It may be added that in the case of Theatre Employees Union and others *versus* Kotnis and others 1992 LLR 600 the management had not got the preliminary enquiry conducted into the matter and had straightway passed the order terminating the services of 12 workmen who had put in more than 12 years service on the basis of admission of guilt made by them. The facts of this case are thus, quite distinguishable and as such the law laid down in that case can not be applied on the fact of this case.

16. For the reasons recorded above, it is held that the termination of services of the workman by the management is legal and justified and the workman is not entitled to any relief. Issue No. 1 is decided against the workman and in favour of the respondent workman.

Issues No. 2 and 3

17. Both of these issues were not pressed during the course of arguments by the authorised representative of the management and as such these issues are decided against the management and in favour of the workman.

18. Relief :

In view of my findings on issue No. 1 above, it is held that the termination of services of the workman by the management is legal and justified. As a sequel to these findings, the workman is not entitled to any relief. The award is passed accordingly.

The 6th October, 1994

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 3044, dated the 26th October, 1994

Acopy with three spare copies is forwarded to the Financial Commissioner and Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.